

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2001 JUL -5 P 2:34

BY DONALD R. CARPENTER

No. 79207-1

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

JUDITH A. YOUNG,

Petitioner

vs.

JAMES M. YOUNG and SHANNON YOUNG,
husband and wife

Respondents

and

STATE OF WASHINGTON
DEPARTMENT OF LABOR & INDUSTRIES

Defendant

SUPPLEMENTAL BRIEF OF PETITIONER, JUDITH YOUNG

TIMOTHY R. GOSSELIN, WSBA #13730
Attorneys for Petitioner

Burgess Fitzer, P.S.
1145 Broadway, Suite 400
Tacoma, WA 98402-3333
Phone: 253.572.5324
Fax: 253.627.8928

ORIGINAL

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE	1
II.	ISSUES PRESENTED FOR REVIEW	3
III.	ARGUMENT	4
A.	Summary of Argument	4
B.	Standard of Review	5
C.	The Proper Measure of Damages in Quantum Meruit Cases Considers the Unique Setting of the Case and the Unique Circumstances of the Parties	6
D.	Substantial Evidence Supported the Trial Court's Decision	11
E.	By Applying a Fixed Measure of Damages, the Court of Appeals' Defeats the Purpose of Equitable Remedies	13
IV.	CONCLUSION	16

APPENDIX

- A. Exhibit 87 - Expert's Report
- B. Findings of Fact/Conclusions of Law

TABLE OF AUTHORITIES

WASHINGTON DECISIONS

<u>Baile Communications, Ltd. v. Trend Bus. Syst.</u> , 61 Wn. App. 151 810 P.2d 12 (1991)	8
<u>Carbon v. Spokane Closing & Escrow Co.</u> , 135 Wn. App. 870 147 P.3d 605 (2006)	10
<u>Carpenter v. Folkerts</u> , 29 Wn. App. 73, 78 627 P.2d 559 (1981)	10
<u>Chemical Bank v. Washington Public Power Supply System</u> , 102 Wn.2d 874 691 P.2d 524 (1984)	8, 9
<u>In re Discipline of Poole</u> , 156 Wn.2d 196, 209 n. 2 125 P.3d 954 (2006)	11
<u>Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc.</u> , 77 Wn. App. 707, 712, 893 P.2d 1127 (1995)	7
<u>Eaton v. Engelcke Mfg., Inc.</u> , 37 Wn. App. 677 681 P.2d 1312 (1984)	14
<u>Ehsani v. McCullough Fam. P'ship</u> , __ Wn.2d __ 159 P.3d 407, 408 (June 07, 2007)	9
<u>Farwest Steel Corp. v. Mainline Metal Works, Inc.</u> , 48 Wn. App. 719 741 P.2d 58 (1987)	14
<u>Hamm v. State Farm Mut. Auto. Ins. Co.</u> , 151 Wn.2d 303, 326 n. 5 88 P.3d 395 (2004)	9, 13
<u>Hyatt v. Dept. of Labor & Indus.</u> , 132 Wn. App. 387, 398 132 P.3d 148 (2006)	9

<u>Lynch v. Deaconess Medical Center</u> , 113 Wn.2d 162 776 P.2d 681 (1989)	14
<u>MacDonald v. Hayner</u> , 43 Wn. App. 81 715 P.2d 519 (1986)	14
<u>Mason v. Mortgage America, Inc.</u> , 114 Wn.2d 842, 850 792 P.2d 142 (1990)	5
<u>Noel v. Cole</u> , 98 Wn.2d 375, 655 P.2d 245 (1982)	6
<u>Norris v. State</u> , 46 Wn. App. 822, 824, 733 P.2d 231 (1987)	7
<u>Shoemaker v. Shaug</u> , 5 Wn. App. 700, 704 490 P.2d 439 (1971)	10
<u>State v. A.N.W. Seed Corp.</u> , 116 Wn.2d 39 802 P.2d 1353 (1991)	8
 WASHINGTON STATUTES AND RULES	
RCW 18.27.080	11

I. STATEMENT OF THE CASE

Over a period of more than four years, Jim and Shannon Young lived on property owned by Jim's aunt, Judith Young. When Jim and Shannon refused to leave the property so Judith could sell it, Judith sued Jim and Shannon asking the court to quiet title in her name and eject them from the property. Jim and Shannon filed a counterclaim. Among other claims, they asserted unjust enrichment for, among other things, improvements they made while living on the property.

The trial court quieted title in Judith on motion for summary judgment. The case proceeded to trial.

At trial, Jim and Shannon presented expert testimony on two matters in support of their unjust enrichment claim: (1) the increase in value of the property attributable to the improvements Jim and Shannon made; (2) the amount a general contractor would have charged Judith to make the improvements to the property that Jim and Shannon had made. Jim and Shannon argued they were entitled to the greater of the two values. Judith presented expert testimony on the increased value of the property, but not on the value of the improvements.

On the value of improvements issue, Jim and Shannon's expert testified that the amount totaled \$760,382.00. This amount represented the sum of the individual costs for each separate improvement (\$501,866.00), plus what the expert termed "supplemental amounts" (\$258,516.00). The "supplemental amounts" included amounts a general contractor would incur for the cost of bonds, insurance, taxes, overhead, profit, construction contingencies, mobilization costs, tools and general equipment, and the like. (CP 640 (Conclusion of Law 8b.); Exh. 87 at 9. The expert's report is attached as **Appendix A**.

The court entered findings of fact and conclusions of law, none of which have been challenged. They are attached as **Appendix B**. The court declined Jim and Shannon's request that they be awarded the greater of the increased value or the cost of improvement, the greater being the increased value. Instead, the court awarded damages based on the value of the work. In doing so, the court accepted dollar for dollar the precise amount assigned to the individual improvements by Jim and Shannon's expert witness, \$501,866.00. (CP 639 (Conclusion of Law 7); Exh. 87 at 9). The only amounts offered by their expert the trial court did not award were the "supplemental amounts." The court stated that "under the circumstances of

this case” Appellants “should not be” entitled to recover general contractor’s costs. (CP 640 (Conclusion of Law 8b.)(emphasis added))

Jim and Shannon appealed. They argued that the trial court should have awarded the greater of (1) the amount by which their work increased the value of the property or (2) the amount their expert testified a general contractor would have charged Judith to perform the work. In the alternative, they argued that if “cost to construct” is the proper measure of damages, the trial court should have included all of what a general contractor would have charged, including the “supplemental amounts,” in its award.

The Court of Appeals rejected the first measure because neither Washington nor a majority of courts require the “greater of” measure of recovery in quantum meruit cases. The Court of Appeals also decided, however, that the trial court should have awarded precisely what a general contractor would have charged, including the “supplemental amounts.” The Court of Appeals remanded the case to the trial court to enter judgment in the amount of \$760,382.00, the total sum testified to by Jim and Shannon’s expert.

II. ISSUES PRESENTED FOR REVIEW

Judith petitioned this Court for review. The Court accepted review

on the following issues:

1. In an action for quantum meruit arising from constructed improvements to real property, is the fact-finder constrained to award the amount a third party general contractor working under ideal circumstances would charge for the work performed by the claimant without regard for the claimant's position or the actual circumstances under which the work was performed?
2. In an action for quantum meruit arising from constructed improvements to real property, does the fact-finder have discretion to consider the claimant's position and the actual circumstances under which the work was performed to determine that the reasonable value of the work performed is less than what a general contractor working under ideal circumstances would have charged for the work performed by the claimant?
3. In this case, did the trial court abuse its discretion in determining that the claimants, who are not licensed general contractors and who constructed improvements over a period of years while residing rent-free on the property, were not entitled to recover as if they were general contractors working under ideal circumstances?

III. ARGUMENT

A. Summary of Argument

The Court of Appeals correctly rejected the "greater of" measure because neither Washington nor a majority of courts apply that measure in quantum meruit cases. And, the Court correctly recognized that the proper measure of recovery in quantum meruit cases is the "reasonable value" of the

work performed. That rule is established by clear precedent. However, the Court of Appeals incorrectly decided that “reasonable value” equated as a matter of law to the cost Judith would have paid a general contractor to perform the work. In doing so, the Court of Appeals failed to apply the established measure of damages in quantum meruit cases, wrongly substituted its judgment for the judgment of the trial court, and in effect, rewarded plaintiffs with amounts they likely would not have received had the work they performed been subject to a clearly articulated oral or written contract. The Court should have reviewed the trial court’s decision for substantial evidence, while recognizing that the positions of the parties and unique circumstances of the case are factors which justify a measure of recovery that considers both the benefit to Judith and the loss to Jim and Shannon. The Court should have ruled that the trial court made an award justified by the evidence and the relative positions of the parties.

B. Standard of Review

The amount of damages is a matter to be fixed within the judgment of the fact finder. A trier of fact has discretion to award damages which are within the range of relevant evidence. *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 850, 792 P.2d 142 (1990). An appellate court will not disturb an

award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice. Id.

C. The Proper Measure of Damages in Quantum Meruit Cases Considers the Unique Setting of the Case and the Unique Circumstances of the Parties.

The measure of damages in quantum meruit cases for improvements to real property was described in Noel v. Cole, 98 Wn.2d 375, 655 P.2d 245 (1982). In that case, a logging company contracted with the Washington Department of Natural Resources to log a portion of public lands. Later, after the company had partially constructed a road to service the operation, the contract was declared void. This court determined, nevertheless, that the contractor was entitled to recover for its improvements to the land and described how to measure that recovery.

The proper measure of its [the contractor's] recovery is the reasonable value of its improvement to the tract in question, namely its partial road construction, less any profits from the timber removed. Where, as here, the party seeking recovery is not at fault, reasonable value is measured by the amount which the benefit conferred would have cost the defendant had it obtained the benefit from some other person **in the plaintiff's position**. Restatement (Second) of Contracts §§ 371, comment *b* (1981); 12 S. Williston, *Contracts* §§ 1485 (3d ed. 1970). **This amount is to be distinguished from cost and might be either more or less, though cost is some evidence of value.** S. Williston, at §§ 1483 (3d ed. 1970);

Edwards, at 607, 409 P.2d 153.

98 Wn.2d at 382-83 (emphasis added). The court went on to determine that reasonable value is an unliquidated amount, not subject to prejudgment interest. *Id.* at 383. By definition, unliquidated damages are damages that must be computed based upon opinion and discretion. See, *Norris v. State*, 46 Wn. App. 822, 824, 733 P.2d 231 (1987) (“By definition, liquidated damages are damages that can be exactly computed without reliance on opinion or discretion.”)

The Court in *Noel* made clear that in determining damages a fact finder properly considers (1) the position of the claimant and (2) the cost of the work performed. These are evidence of reasonable value, neither of which are determinative as a matter of law. The Court also made clear that reasonable value is not subject to precise measurement and, therefore, must be within the fact-finder’s discretion.

These rulings make clear that the amount of quantum meruit awards is discretionary, individualized, case specific, and not subject to hard and fast rules of measurement. This fact has been recognized repeatedly, both explicitly and implicitly, in decisions before and after *Noel*. As the Court stated in *Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App.

707, 712, 893 P.2d 1127 (1995), quantum meruit remedies are fashioned broadly to fit a variety of circumstances.

In quantum meruit and restitution cases, Washington courts measure the reasonable value of the benefit conferred to the defendant in a variety of ways. *See i.e., Losli v. Foster*, 37 Wn.2d 220, 232, 222 P.2d 824 (1950) (actual cost of labor and materials); *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wn. App. 190, 653 P.2d 1331 (1982) (contract price). Although early Washington cases limited recovery to the contract price, later cases suggest that this rule is not applicable in all cases. *See Dravo Corp. v. L.W. Moses Co.*, 6 Wash.App. 74, 91, 492 P.2d 1058 (1971) (citing early cases), *review denied*, 80 Wn.2d 1010 (1972); *see generally* Joseph M. Perillo, *Restitution in the Second Restatement of Contracts*, 81 Col.L.Rev. 37, 44-45 (1981); *U.S. for Use of Bldg. Rentals Corp. v. Western Cas. & Sur. Co.*, 498 F.2d 335, 338 (9th Cir.1974) ("The contract price, while evidence of reasonable value, is neither the final determinant of the value of performance nor does it limit recovery.").

Accord *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 802 P.2d 1353 (1991) ("Restitution . . . encompasses a very broad scope of remedies fashioned to fit a variety of circumstances.")

At the center of this broad scope of remedies is the equitable nature of the claim itself. Quantum meruit is one of the names of relief for unjust enrichment, and falls within the unjust enrichment doctrine. *Baile Communications, Ltd. v. Trend Bus. Syst., supra*, 61 Wn. App. at 160. Unjust enrichment is a form of the more generalized claim for restitution. *Chemical*

Bank v. Washington Public Power Supply System, 102 Wn.2d 874, 904, 691 P.2d 524 (1984). Restitution is an equitable remedy and "trial courts have broad discretionary power to fashion equitable remedies." Ehsani v. McCullough Fam. P'ship, ___ Wn.2d ___, 159 P.3d 407, 408 (June 07, 2007), quoting In re Foreclosure of Liens, 123 Wn.2d 197, 204, 867 P.2d 605 (1994).

Restitution is not of mere right. It is ex gratia, resting in the exercise of a sound discretion, and the court will not order it where the justice of the case does not call for it

Ehsani, supra, 159 P.3d at 412, (quoting Atlantic Coast Line R.R. Co. v. Florida, 295 U.S. 301, 310, 55 S. Ct. 713, 79 L. Ed. 1451 (1935)(quoting Gould v. McFall, 118 Pa. 455, 456, 12 A. 336 (1888))).

Indeed, consideration of the unique setting of the case and the unique circumstances of the parties is the hallmark of equitable remedies. Our courts have stated: "[E]quitable doctrines grew naturally out of the humane desire to relieve under special circumstances from the harshness of strict legal rules." Hamm v. State Farm Mut. Auto. Ins. Co., 151 Wn.2d 303, 326 n. 5, 88 P.3d 395 (2004) (quoting Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 173, 937 P.2d 565 (1997)); accord Hyatt v. Dept. of Labor & Indus., 132 Wn. App. 387, 398, 132 P.3d 148 (2006)("Equitable doctrines are

generally designed to relieve certain parties under special circumstances from the harshness of strict legal rules.”). The goal of the court in equity is to do substantial justice to the parties. *Shoemaker v. Shaug*, 5 Wn. App. 700, 704, 490 P.2d 439 (1971); *Carbon v. Spokane Closing & Escrow Co.*, 135 Wn. App. 870, 878-79, 147 P.3d 605 (2006). Thus, “[a] trial court sitting in equity may fashion broad remedies to do substantial justice and put an end to litigation.” *Carpenter v. Folkerts*, 29 Wn. App. 73, 78, 627 P.2d 559 (1981).

It is apparent that a trial court cannot address the “justices of the case,” “do substantial justice”, or relieve the parties from the “harshness of strict legal rules” without the discretion to consider individualized facts and the ability to fashion an appropriate, individualized remedy. Therefore, in quantum meruit cases based on improvements to real property, trial courts tasked with determining reasonable value should not be constrained by what a general contractor would charge to do the work.

The trial court here did not consider itself so constrained. For this reason, the trial court did not apply an incorrect legal standard in assessing damages when it considered facts other than what a general contractor would have charged Judith.

D. Substantial Evidence Supported the Trial Court's Decision.

If the trial court properly did not constrain its award of damages by what a general contractor would have charged Judith to do the work, the next question is whether substantial evidence supported the court's decision that reasonable value did not include the "supplemental amounts." Substantial evidence is evidence sufficient "to persuade a fair-minded, rational person of the truth of a declared premise." *In re Discipline of Poole*, 156 Wn.2d 196, 209 n. 2, 125 P.3d 954 (2006).

In this case, many facts supported the trial court's decision that awarding the "supplemental amounts" was not warranted:

- Jim and Shannon were not general contractors, nor were they licensed as such. (CP 618 (Finding of Fact 4); CP 659, ln. 7-11). Jim was licensed to perform tree removal. Consequently, Judith did not have the protections that licensing or lack of licensing would have provided. See RCW 18.27.080.
- Jim also was not bonded or insured for the work, and consequently Judith did not have those protections either.
- Jim and Shannon performed the work under conditions dissimilar to those that would have been expected of a general contractor. They completed work on their own schedule and as their family and other business ventures allowed.

- A substantial portion of the award was compensation for Jim's and Shannon's own time which did not justify a separate award for profit. (CP 627 (Finding of Fact 79)).
- Jim and Shannon did not actually incur some of the supplemental expenses, such as sales taxes, bonding and insurance costs.
- Jim and Shannon received other benefits the court did not offset. Among them was the rent-free, voluntary occupation of the premises for a period of years (CP 659, ln. 14; 669, lns. 8-11) including use of the premises to store their business-related property, the interest free use of loan proceeds for a period of years (CP 642 (Conclusion of Law 17D.)), and gifts (CP 668, lns. 5-7).
- The cost of the work was never specified, unlike what would occur with a general contractor. Thus, Judith lost an important element in the planning and decision-making process.
- Jim and Shannon made many if not most of the construction decisions to suit their individual tastes and goals.
- Unlike a general contractor, Jim and Shannon resided on the property, using it during the time of construction as it suited their needs.
- At points during their relationship, Judith had offered to pay Jim and Shannon, but they declined. (CP 660, lns. 9-20).
- The parties are family members, and have an extensive history of financial dealings that benefitted both, but were not controlled by free-market

conditions. One example was a substantial unsecured, interest only loan Judith extended to Jim and Shannon. (CP 619 (Findings of Fact 13-14)).

- At all times Judith acted in good faith. (CP 633 (Finding of Fact 119(a))).
- Judith promptly and without question paid expenses Jim and Shannon presented to her. (CP 668, Ins. 7-10).
- Jim and Shannon did not advise Judith that such costs were being incurred or would ordinarily be charged for the work they were performing.

This evidence showed that Jim's and Shannon's position vis-a-vis Judith was substantially unlike that of a general contractor to a client. Based on this evidence, a reasonable fact finder could reasonably conclude that awarding Jim and Shannon the full panoply of general contractor costs was not appropriate. Thus, the evidence supporting the trial court's decision was substantial.

E. By Applying a Fixed Measure of Damages, the Court of Appeals' Defeats the Purpose of Equitable Remedies.

The purpose for the court's crafting equitable remedies, any equitable remedy, has not changed over the centuries. It is now and has always been to mitigate the perceived harshness of some legal rule.

Hamm v. State Farm Mut. Auto. Ins. Co., 151 Wn.2d 303, 326, 88 P.3d 395

(2004). Thus, by definition, equity mitigates and serves as a compromise to

the more harsh legal doctrines. As a compromise, equity may act without undermining the legal principles it seeks to ameliorate.

This fact is illustrated by the law of implied contracts. The law recognizes two types of implied contracts: contracts implied in law and contracts implied in fact. Unjust enrichment, the equitable remedy, is a contract implied in law. Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn. App. 719, 731, 741 P.2d 58 (1987) (quoting Truckweld Equip. Co. v. Olson, 26 Wn. App. 638, 646, 618 P.2d 1017 (1980)). A contract implied in law is one imposed by the courts because of an implied duty of the parties not based upon mutual assent. In contrast, contracts implied in fact are express legal contracts. They arise from a mutual consent and an intention to contract with the other party. Lynch v. Deaconess Medical Center, 113 Wn.2d 162, 165, 776 P.2d 681 (1989). A contract implied in fact requires a meeting of the minds, and an agreement of the parties arrived at from their conduct. MacDonald v. Hayner, 43 Wn. App. 81, 85, 715 P.2d 519 (1986); Eaton v. Engelcke Mfg., Inc., 37 Wn. App. 677, 680, 681 P.2d 1312 (1984). Because contracts implied in law are implied despite the absence of consent, recovery on that theory is, logically, limited. When consent is present, the full panoply of contract rights should exist.

Equitable remedies were appropriate in this case because Jim and Shannon did not have a contract -- actual or implied in fact -- with Judith. There was no mutual agreement or consent. In the absence of contract, Jim and Shannon would have had no basis at law to recover for their work. The doctrine of quantum meruit gave them a remedy. However, when the Court of Appeals held as a matter of law that the only measure of damages for constructed improvements to real property is the value of the work as if it were contracted for with a general contractor, the court applied quantum meruit as a contract implied in fact. In essence, the Court decided that, as a matter of law, equity requires Jim and Shannon to be treated as if they had explicitly contracted with Judith.

In doing so, the Court undermined the very need for contract. If the law requires persons recovering in quantum meruit to be compensated in the same manner as persons subject to explicit contracts, and prohibits consideration of other factors personal to them and to the benefitted party, individuals lose incentive to contract, and the distinction between contracts implied in law and those implied in fact is lost. If Jim and Shannon knew before hand that they would be paid as a general contractor with or without Judith's consent, they would have had no incentive to provide any of the

benefits that typically accompany the contractual construction relationship: an estimate the cost of the project, a specification of the type and quality of the work to be performed, a schedule for performance, or the terms of the relationship, everything that consent and a meeting of the minds might engender. This Court should not allow the distinction between equitable remedies and legal remedies to be lost.

IV. CONCLUSION


In the absence of an error of law, abuse of discretion is not present when substantial evidence supports the trial court's decision. Here, however, the Court of Appeals did not determined that the trial court did not have good reason or substantial evidence for refusing to award Jim and Shannon the "supplemental amounts." Thus, the Court also did not decide that *the facts in this particular case* showed that "reasonable value" should have been measured only by what a general contractor would have charged Judith. Instead, using the guise that the trial court had made an error of law in misinterpreting the meaning of "reasonable value," the Court of Appeals stripped the trial court of its discretion, holding that "reasonable value" in the context of improvements to real property always equates to what a general

contractor would charge to do the work. In this way, the court was able to both reverse the trial court and impose a new award without ever reviewing the sufficiency of the evidence for an alternate measure of damages.

This Court should reverse the Court of Appeals. The trial court applied the correct legal standard. Accordingly, its decision should have been reviewed for substantial evidence. Because substantial evidence supported the trial court's decision, it should have been affirmed.

Respectfully submitted this 5th day of July, 2007.

BURGESS FITZER, P.S.

By: 
TIMOTHY R. GOSSELIN, WSB #13730
Attorneys for Respondent

APPENDIX A

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
1	House (general)	4,800	S F			
	Replace Furnace	1	L S	11,296.00	\$11,296	Sunset Air
	Window Coverings	1	L S	213.00	\$213	Home Depot
	Relocate Furnishings during Construction	1	L S	2,000.00	\$2,000	Estimate 2 hours/week x 50 weeks
	Daily Cleanup during Construction	1	L S	5,000.00	\$5,000	Estimate 5 hours/week x 50 weeks
2	Subfloor	1	L S	511.00	\$511	Suburban Propane
	New Gas Lines for Appliances & Fireplace					
3	Front Entryway	112	S F			
	Remove Underlayment & Carpet	112	S F	0.50	\$56	
	Remove & Replace GWB Walls	270	S F	1.30	\$351	
	Remove & Replace Insulation	270	S F	0.80	\$216	
	Remove Plates, Grilles, etc.	1	L S	30.00	\$30	
	Texture Walls	270	S F	0.15	\$41	
	Remove & Replace & Trim	70	L F	3.00	\$210	
	Paint Walls, Ceilings, Doors & Trim	382	S F	0.70	\$267	
	New Underlayment & Slate Tile	112	S F	10.00	\$1,120	
4	Green Room	398	S F			
	Remove Underlayment & Carpet	398	S F	0.50	\$199	
	Rebuild Archways	2	E A	500.00	\$1,000	
	Repair Large Window Liner	28	L F	3.00	\$84	
	Replace Side Windows	2	E A	300.00	\$600	
	New French Door Assemblies	2	E A	600.00	\$1,200	
	Remove & Replace GWB Ceiling	398	S F	1.60	\$637	
	Remove & Replace Light Fixtures	1	L S	45.00	\$45	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	60.00	\$60	
	Remove & Replace Insulation	398	S F	1.00	\$398	
	Remove & Replace Trim	116	L F	3.00	\$348	
	Texture Ceiling	398	S F	0.20	\$80	
	Paint Ceilings & Trim	514	S F	0.80	\$411	
	New Wallpaper	598	S F	1.00	\$598	
	New Underlayment & Carpet	398	S F	5.00	\$1,990	

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
5	Dining Room					
	Remove & Replace Subfloor	360	S F	1.60	\$576	
	Remove Underlayment & Carpet	360	S F	0.50	\$180	
	Remove & Replace Insulation	360	S F	0.90	\$324	
	Paint Ceiling & Trim	360	S F	0.80	\$288	
	Remove & Replace Trim	100	L F	3.00	\$300	
	New Underlayment & Pergo	360	S F	7.00	\$2,520	
6	SE Bed/Bath					
	Remove Underlayment & Carpet	176	S F	0.50	\$88	
	Remove Ceramic Tile Floor	176	S F	1.00	\$176	
	Remove & Replace GWB Walls	50	S F	1.00	\$50	
	Remove & Replace GWB Ceiling	686	S F	1.30	\$892	
	Remove & Replace Light Fixtures	243	S F	1.60	\$389	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	0.45	\$0	
	Remove & Replace Insulation	1	L S	60.00	\$60	
	Texture Walls & Ceiling	929	S F	0.90	\$836	
	Remove, Strip, Refinish & Replace Doors	929	S F	0.12	\$111	
	Remove & Replace Trim	4	E A	100.00	\$400	
	Paint Walls, Ceilings & Trim	160	L F	3.00	\$480	
	New Underlayment & Pergo	929	S F	0.70	\$650	
	New Sheet Vinyl Flooring	176	S F	7.00	\$1,232	
		68	S F	8.00	\$544	
7	Office					
	No Work Done	0	L S	0.00	\$0	
8	S Bed/Bath					
	Remove & Replace Bath Subfloor	65	S F	1.60	\$104	
	Remove Underlayment & Carpet	65	S F	0.50	\$64	
	Remove Ceramic Tile Floor	127	S F	1.00	\$65	
	Remove & Replace GWB Walls	65	S F	1.30	\$650	
	Remove & Replace GWB Ceiling	500	S F	1.60	\$283	
	Remove & Replace Light Fixtures	177	S F	45.00	\$45	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	60.00	\$60	

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
8	S Bed/Bath (cont)					
	Remove & Replace Insulation	742	S F	0.90	\$668	
	Texture Walls & Ceiling	692	S F	0.12	\$83	
	Remove, Strip, Refinish & Replace Doors	4	E A	100	\$400	
	Remove & Replace Window Liners	40	L F	5.00	\$200	
	Remove & Replace Trim	120	L F	3.00	\$360	
	Remove & Replace Toilet	1	E A	500.00	\$500	
	Paint Walls, Ceilings & Trim	692	S F	0.70	\$484	
	New Underlayment & Pergo	127	S F	7.00	\$889	
	New Sheet Vinyl Flooring	50	S F	6.00	\$300	
9	Laundry					
	Remove & Replace Subfloor	75	S F			
	Remove Underlayment & Flooring	40	S F	1.60	\$64	
	Patch Walls	75	S F	0.70	\$53	
	Remove & Replace GWB Ceiling	1	L S	40.00	\$40	
	Remove & Replace Light Fixture	75	S F	1.60	\$120	
	Remove & Replace Plates, Grilles & Diffusers	1	E A	30.00	\$30	
	Remove & Replace Insulation	1	L S	30.00	\$30	
	Texture Walls & Ceiling	40	S F	0.90	\$36	
	Remove, Strip, Refinish & Replace Doors	360	S F	0.12	\$43	
	Remove & Replace Trim	3	E A	100.00	\$300	
	Paint Walls, Ceilings & Trim	120	L F	3.00	\$360	
	New Underlayment & Tile	360	S F	0.70	\$252	
		75	S F	8.00	\$600	
10	Sun Room					
	Remove Floor Tile	416	S F			
	New Tile Floor & Base	416	S F	0.80	\$333	
	New Base Tile	416	S F	7.00	\$2,912	
		100	L F	5.00	\$500	
11	Kitchen					
	Remove & Replace Subfloor	349	S F			
	Remove Underlayment & Flooring	349	S F	1.60	\$558	
	Remove & Replace Interior Walls	349	S F	1.10	\$384	
		150	S F	5.00	\$750	

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
11	Kitchen (cont)					
	Remove & Replace GWB Walls	813	S F	1.30	\$1,057	
	Remove & Replace Dropped Ceiling	175	S F	1.60	\$280	
	Remove & Replace GWB Ceiling	175	S F	1.60	\$280	
	Remove Old Cabinets & Countertops	46	L F	10.00	\$460	
	New Cabinets & Countertops	1	L S	13,824.00	\$13,824	Lumbermen's Building Centers
	Remove & Replace Light Fixtures	1	L S	300.00	\$300	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	90.00	\$90	
	Remove & Replace Insulation	1,662	S F	0.90	\$1,496	
	Remove & Replace Skylight & Well	2	E A	600.00	\$1,200	
	Remove & Replace Appliances	1	L S	18,153.00	\$18,153	McKinney's Appliance, Black Diamond Roofing
	Gas Piping	See Above		0.00	\$0	
	Texture Walls & Ceiling	1,162	S F	0.12	\$139	
	Reframe Garden Window	1	E A	500.00	\$500	
	Remove & Replace Trim	200	L F	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,162	S F	0.70	\$813	
	New Underlayment & Slate Tile	349	S F	10.00	\$3,490	
12	Living/Bar	558	S F			
	Remove & Replace Subfloor	558	S F	1.60	\$893	
	Remove Underlayment & Flooring	558	S F	0.60	\$335	
	Remove & Replace GWB Walls	1,099	S F	1.30	\$1,429	
	Remove & Replace GWB Ceiling	558	S F	1.60	\$893	
	Remove & Replace Light Fixtures	1	L S	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	60.00	\$60	
	Remove & Replace Insulation	2,215	S F	0.90	\$1,994	
	Remove & Replace Window	1	E A	300.00	\$300	
	Texture Walls & Ceiling	1,657	S F	0.12	\$199	
	Remove & Replace Trim	150	L F	3.00	\$450	
	Paint Walls, Ceilings & Trim	1,657	S F	0.70	\$1,160	
	New Underlayment & Carpet	528	S F	5.00	\$2,640	
	New Slate Tile @ Fireplace	40	S F	12.00	\$480	

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
13	Library					
	No Work Done	0	L S	0.00	\$0	
14	NW Hallway					
	Remove Underlayment & Flooring	52	S F	0.60	\$31	
	Remove & Replace Trim	90	L F	3.00	\$270	
	Paint Trim	90	L F	0.50	\$45	
	New Underlayment & Carpet	52	S F	5.00	\$260	
15	NW Bed/Bath (unfinished)					
	Remove Underlayment & Carpet	218	S F	0.50	\$109	
	Remove Ceramic Tile Floor	55	S F	1.00	\$55	
	Remove & Replace GWB Walls	680	S F	1.30	\$884	
	Remove & Replace GWB Ceiling	273	S F	1.60	\$437	
	Remove & Replace Light Fixtures	1	L S	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	45.00	\$45	
	Remove & Replace Insulation	953	S F	0.90	\$858	
	Remove Tub Enclosure	1	E A	90.00	\$90	
	Texture Walls & Ceiling	953	S F	0.12	\$114	
	Remove, Strip, Refinish & Replace Doors	4	E A	100.00	\$400	
	Remove & Replace Trim	160	L F	3.00	\$480	
	Paint Walls, Ceilings & Trim	953	S F	0.70	\$667	
	New Underlayment & Pergo	218	S F	8.00	\$1,744	
	New Sheet Vinyl Flooring	55	S F	6.00	\$330	
16	Master Bed/Bath					
	Remove Underlayment & Carpet	390	S F	0.50	\$195	
	Remove & Replace GWB Ceiling	555	S F	1.60	\$888	
	Remove & Replace Light Fixtures	1	L S	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	L S	90.00	\$90	
	Remove & Replace Insulation	555	S F	0.90	\$500	
	Remove & Replace Toilet	1	E A	500.00	\$500	
	Texture Ceiling	555	S F	0.12	\$67	

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
16	Master Bed/Bath (cont)					
	Remove & Replace Insulation	555	S F	0.90	\$500	
	Remove, Strip, Refinish & Replace Doors	3	E A	100.00	\$300	
	Remove & Replace Trim	200	L F	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,400	S F	0.70	\$980	
	New Underlayment & Carpet	390	S F	5.00	\$1,950	
17	Walk-in Closet					
	Remove Underlayment & Carpet	96	S F	0.50	\$48	
	Remove & Replace GWB Walls	320	S F	1.30	\$416	
	Remove & Replace GWB Ceiling	96	S F	1.60	\$154	
	Remove & Replace Light Fixtures	1	L S	30.00	\$30	
	Remove & Replace Insulation	416	S F	0.90	\$374	
	Texture Walls & Ceiling	416	S F	0.12	\$50	
	Remove & Replace Trim	60	L F	3.00	\$180	
	Paint Walls, Ceilings & Trim	416	S F	0.70	\$291	
	New Underlayment & Carpet	96	S F	5.00	\$480	
18	Roof					
	Remove & Replace Tile	6,000	S F	4.50	\$27,000	
	Remove & Replace Fireplace Cap	1	E A	400.00	\$400	
	Clean/Repair Gutters & Downspouts	150	L F	2.00	\$300	
	Paint Touchup	1	L S	300.00	\$300	
19	Driveway Pavers					
	Remove & Replace Pavers	2,400	S F			
	Power Wash Old Pavers	1,200	S F	6.00	\$7,200	
		1,200	S F	0.50	\$600	
20	Outbuilding/Garage					
	New Gas Heater	1	E A	1,000.00	\$1,000	
	Gas Piping & Vent	1	L S	300.00	\$300	
	Paint Garage Doors	5	E A	100.00	\$500	
21	Area next to Outbuilding/Garage					
	ak & Remove Concrete Pads	2,650	S F	1.50	\$3,975	

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
22	Water Well					
	Remove & Replace Equipment	1	L S	2,610.00	\$2,610	John's Plumbing & Pumps
23	2nd Outbuilding/Garage	3,700	S F			
	Remove & Replace Metal Roof	4,800	S F	2.00	\$9,600	
	Repair or Replace Gutters & Downspouts	200	L F	4.00	\$800	
	Remove & Replace Concrete Slab in Front	360	S F	3.00	\$1,080	
	Misc Power Washing/Painting	1	L S	500.00	\$500	
24	Additional Buildings	2,400	S F			
	Demo & Remove Wood Frame Building	600	S F	2.00	\$1,200	
	Demo & Remove Foundation Concrete	600	S F	2.00	\$1,200	
	Demo & Remove Metal Building	1,800	S F	3.00	\$5,400	
25	Building Site	1,100	S Y			
	Grade Excavated Site	1,100	S Y	1.00	\$1,100	
26	Original Farmhouse					
	Demo & Remove Wood Frame House	1	L S	4,760.00	\$4,760	S & J Excavation
	Demo & Remove Concrete Foundation	See Above		0.00	\$0	
27	Lagoons	10,000	S F			
	Strip and Remove Manure	1	L S	26,200.00	\$26,200	S & J Excavation
	Spread Manure on Fields	See Above		0.00	\$0	
	Excavate & Load from Building Site for Fill	See Above		0.00	\$0	
	Excavate, Haul, Dump & Compact at Lagoons	See Above		0.00	\$0	
	Spread, Compact & Grade Lagoon Fill	See Above		0.00	\$0	
28	Old Farm Garage	820	S F			
	Remove & Replace Metal Roofing	1,120	S F	2.00	\$2,240	
	Repair Gutters & Downspouts	1	L S	300.00	\$300	
	Repair/Replace Roof Strip Sheathing	1,120	S F	0.50	\$560	
	Remove Interior Electrical Wiring	1	L S	200.00	\$200	
	Misc Power Washing/Painting	1	L S	200.00	\$200	

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
29	2nd Farm Outbuilding	3,200	S F			
	Remove & Replace Metal Roofing	4,150	S F	2.00	\$8,300	
	New Concrete Slab	1,590	S F	3.00	\$4,770	
	New Wood Curbs	60	L F	10.00	\$600	
	New Locking Stanchions	60	L F	25.00	\$1,500	
	Misc Power Washing/Painting	1	L S	500.00	\$500	
30	Barn	2,800	S F			
	Add Beams/Shoring	1	L S	1,500.00	\$1,500	
	Remove & Replace Roof Shingles	5,600	S F	4.00	\$22,400	
	Remove & Replace Elec Power & Lighting	2,800	S F	1.50	\$4,200	
	New Exterior Concrete Slab	525	S F	3.00	\$1,575	
	New Locking Stanchions	50	L F	25.00	\$1,250	
	Misc Power Washing/Painting	1	L S	1,000.00	\$1,000	
31	Guest House	600	S F			
	Interior Framing, Plbg, Elec, Insul & Finish	1,200	S F	25.00	\$30,000	
	Exterior Window & Misc Painting	1	L S	300.00	\$300	
	Repair & Paint Roof	980	S F	1.50	\$1,470	
32	Clearing					
	Clear Fenceline	1	L S	13,800.00	\$13,800	S & J Excavation
	Clear Stumps & Small Trees	40	A C	2,500.00	\$100,000	S & J Excavation
	Rock Removal	100	C Y	15.00	\$1,500	S & J Excavation
	Remove Old Roofing Supplies & Debris	1	L S	3,100.00	\$3,100	S & J Excavation
	Original Cleanup of Property	1	L S	6,400.00	\$6,400	S & J Excavation
33	Perimeter Fencing					
	Remove Old Fencing	10,000	L F	0.50	\$5,000	
	Repair Old Fencing	1	L S	1,000.00	\$1,000	
	Repair Old Gates	1	L S	500.00	\$500	
	New Barbed Wire, Steel/Wood Post Fencing	20,142	L F	2.00	\$40,284	
	New Metal Drive-Through Gates	5	E A	500.00	\$2,500	

03/04

sci

YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
34	Corrals					
	New Corrals	580	L F	12.00	\$6,960	
	New Corral Gates	4	E A	300.00	\$1,200	
35	Road & Driveway Fencing/Landscaping					
	Repair/Replace Wood Fencing Sections	2,000	L F	6.00	\$12,000	
	Paint Wood Fencing	2,000	L F	3.00	\$6,000	
	Landscaping	1	L S	2,226.00	\$2,226	Home Depot, Commodities Unlimited, Quality Rock, Home Base, Cascade Sand & Gravel
	Subtotal				\$501,866	
	Mobilization/Demobilization (1%)				\$5,019	
	Supervision, Tools & General Equipment (15%)				\$76,033	
	Debris Disposal				\$10,000	
	Subtotal Direct Construction Cost				\$592,917	
	Overhead & Profit (10%)				\$59,292	
	Construction Contingency (5%)				\$32,610	
	Subtotal				\$684,819	
	Bonds, Insurance, Business Taxes (3%)				\$20,545	
	Washington State Sales Tax (7.8%)				\$55,018	
	TOTAL CONTRACTED CONSTRUCTION COST				\$760,382	

NOTES:

- 1 Estimate does not include ongoing maintenance and repair or costs associated with hazardous materials, permits, fees, assessments, surveying, testing and inspection, design, owner administration, or other nonconstruction 'soft' costs.
- 2 Estimated costs reflect reasonable year 2000 prices (as an average for work accomplished from approximately 11/97 through 12/02) from published cost references and other recent construction projects. All items without comments are estimated contractor bid costs.

APPENDIX B

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

05 APR 15 AM 11:06

BETTY J. GOULD, CLERK

BY 62
DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

JUDITH YOUNG,


Plaintiff,

vs.

JAMES M. YOUNG and SHANNON YOUNG,
husband and wife; and STATE OF
WASHINGTON, DEPARTMENT OF LABOR &
INDUSTRIES,

Defendants.

NO. 03-2-00937-4

~~PROPOSED~~ ME 
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on regularly for trial on Monday, March 14 through Friday, March 18, 2005. The Court took a view of the premises and heard opening statements on Monday, March 14. The Court heard the testimony of witnesses on Tuesday, March 15, Wednesday, March 16, and Thursday March 17. The Court heard closing arguments on Friday, March 18.

The Court considered the testimony of the following witnesses:

1. Judith Young
2. James Young
3. Shannon Young
4. Michael Summers

FINDINGS OF FACT AND CONCLUSIONS OF LAW-1
C:\45MB\Young\Findings of Fact.wpd

OWENS DAVIES, P.S.
926 - 24th Way SW • P. O. Box 187
Olympia, Washington 98507
Phone: (360) 942-
Facsimile: (360) 942-

ORIGINAL

0-000000616

- 1 5. Jan Henry
- 2 6. Murphy Wagar
- 3 7. William Knight, and
- 4 8. Gene Weaver

5
6 In addition, the Court admitted numerous exhibits into evidence as shown on the list which
7 is attached hereto as Exhibit A and incorporated by reference herein.

8 The Court issued its oral decision on Wednesday, March 30, 2005 at 11:00 a.m. A copy
9 of the transcript of the Court's oral decision is attached hereto as Exhibit B and incorporated by
10 reference herein.

11 After the Court rendered its oral decision, but prior to entry of these findings of fact,
12 conclusions of law, and judgment, the Court heard:

- 14 ▶ Jim and Shannon Young's Motion for Reconsideration re Double Credit for
15 ServPro Invoice;
- 16 ▶ Jim and Shannon Young's Motion for an Award of Attorney's Fees Related to Late
17 Disclosed Opinions of Gene Weaver;
- 18 ▶ Judith Young's Motion for Clarification Regarding Offset of Delinquent Interest
19 Payments;

20
21 A copy of the Court's ruling on those motions is incorporated by reference herein.

22 Based on the foregoing, the Court hereby enters Findings of Fact and Conclusions of Law
23 as follows:

FINDINGS OF FACT

PARTIES

1. The plaintiff, Judith Young, is a single individual.
2. Judith Young resides in a mobile home on an approximately 200 acre piece of property located in rural Georgia.
3. Judith Young is independently wealthy.
4. The defendants, James M. ("Jim") and Shannon Young, are a married couple.
5. Jim Young is a licensed and bonded contractor engaged in the businesses of timber cutting, clearing, grading, dozing, and concrete slab construction.
6. Shannon Young is not currently employed outside of the home.
7. Jim and Shannon Young have four children.

**RELATIONSHIP PRIOR TO PURCHASE
OF THURSTON COUNTY PROPERTY**

8. Judith Young is Jim Young's aunt.
9. Although they had previously been acquainted, Judith Young and Jim and Shannon Young began developing a close relationship in 1993 when they all traveled to Minneapolis, Minnesota at the time of Judith Young's mother's last illness and death.
10. Between 1993 and 1997, Judith Young and James and Shannon Young kept in regular contact over the telephone.
11. Throughout this time, and until they moved onto the Thurston County property, Jim and Shannon Young lived in a house which they owned in Shelton, Washington.

1 12. In 1997, Jim and Shannon Young purchased an unimproved piece of property
2 located in the Nisqually area of Thurston County with the intent of constructing a log home upon
3 the property and moving there.

4 NOVEMBER 1996 LOAN

5
6 13. In November 1996, Judith Young lent Jim and Shannon Young \$150,000.00. Jim
7 and Shannon Young agreed to make interest only payments in the amount of \$850.00 per month
8 until November 2006, at which time the principle balance became due and payable.

9 14. Jim and Shannon Young made the monthly interest payments through May, 2002,
10 but have not made any interest payments on the debt since that date.

11 GEORGIA OTTER FACILITY

12
13 15. For many years prior to 1998, Judith Young has managed an otter conservation
14 facility located upon her property in Georgia.

15 16. Since 1993, Judith has left the otter conservation center overnight on only four
16 occasions: on her mother's death, on her father's death, to attend her deposition in this case, and
17 to attend the trial of this case.

18 17. In 1997, the otter conservation facility consists of approximately five temporary
19 12' x 24' enclosed steel and wire cages set in concrete, covered by tin roofs, and one larger, more
20 permanent, in-ground pen that was approximately four times the size of the temporary pens. The
21 otter conservation facility also had a food preparation area and related facilities.

22 18. Many of the buildings and facilities on Judith's property, including buildings, pens
23 and other facilities used in connection with her otter conservation center, were in substantial need
24 of maintenance and repair.
25
26
27
28

1 19. In 1997, and at all times since, Judith Young has kept numerous animals on her
2 property in Georgia in addition to her otters, including horses, llamas, dogs, cats, and birds.

3 1997 VISIT BY JIM AND SHANNON YOUNG

4 20. In 1997, Jim and Shannon Young, for the first time, visited Judith at her property
5 in Georgia, and stayed with Judith Young for approximately one week.
6

7 21. Prior to and during Jim and Shannon Young's 1997 visit to Judith Young's property
8 in Georgia, Judith Young had told Jim and Shannon Young she did not like her neighbors, did not
9 like living in Georgia, and that she wanted to move herself, her otter conservation center, and her
10 animals elsewhere.

11 22. During their visit to Judith Young in Georgia in 1997, Jim and Shannon Young
12 installed a concrete slab underneath Judith Young's garage near her mobile home. Jim and
13 Shannon Young also did other work repairing and maintaining Judith Young's property.
14

15 23. Jim and Shannon Young did this work without any intent that they be paid for it.

16 24. Judith Young discussed with Jim and Shannon Young the possibility of moving to
17 Washington state.

18 25. Judith Young had told Jim Young she wanted to find a property to move to with
19 natural springs, because well water gave her otters gall stones.
20

21 PURCHASE OF THURSTON COUNTY PROPERTY

22 26. In the spring of 1998, Jim Young was asked to buy certain property located in
23 Thurston County, Washington (the "Thurston County property").

24 27. The Thurston County property had not been lived on and properly maintained for
25 about ten years.
26

27 28. The Thurston County property had a house ("the Ranch House") located on it.
28

1 29. Although it was structurally sound, the Ranch House was in poor condition. The
2 roof had leaked, which had caused water damage to much of the interior dry-wall, carpeting, and
3 flooring. Most of the appliances and toilets did not work.

4 30. In addition to the Ranch House, there were a number of outbuildings and facilities
5 located on the Thurston County property. These outbuildings and facilities included a garage, a
6 shop building, a three story barn, two manure lagoons, an old, derelict farm house, a granary, and
7 several smaller outbuildings, some of which were derelict..

8 31. All of these buildings had not been maintained during the period the property had
9 been left vacant, such that all the buildings were in substantial need of maintenance and repair.
10

11 32. Because the property had not been occupied or cared for for several years, the land
12 itself was in a run-down condition.
13

14 33. The fields on the property were full of rocks and stumps. There was some fencing
15 on the property, but it was incomplete and in poor repair. The roads on the property had not been
16 maintained. Numerous cars had been abandoned on the property. There was a substantial amount
17 of debris left in the outbuildings and scattered throughout the property. Tansy (a noxious weed
18 subject to control by the Thurston County Noxious Weed Control Authority) was growing on the
19 property.
20

21 34. At the time Jim Young was asked to hay the Thurston County property, its owner
22 had listed the property for sale.

23 35. The owner of the property had employed Jan Henry, a licensed real estate agent
24 who had been involved in the purchase and sale of real estate in Thurston County for many years,
25 to assist in the marketing and sale of the property.
26
27
28

1 36. Jim Young did not actually hay the Thurston County property because the fields
2 were too full of rocks to permit him to use his haying equipment.

3 37. However, Jim and Shannon Young brought the Thurston County property to the
4 attention of Judith Young.
5

6 38. Despite the poor condition of the property, Jim and Shannon Young believed that
7 the property had characteristics that might make it desirable for Judith Young.

8 39. The property was about as large as Judith Young's property in Georgia, and thus
9 would afford her the privacy that she desired.

10 40. There were also natural springs located upon the property, which Judith Young
11 desired to use to supply water for her otters.
12

13 41. Jim and Shannon Young fully described the Thurston County property to Judith
14 Young, including both its current run-down condition and its potential for development.

15 42. Jim and Shannon Young also sent Judith Young numerous pictures of the property.

16 43. Judith Young discussed with Jim and Shannon Young plans for improving the
17 property for her use.
18

19 44. Judith Young asked Jim and Shannon Young to do, and Jim and Shannon Young
20 agreed that Jim and Shannon Young would do, the work necessary to fix up the property for Judith
21 Young.

22 45. Judith Young agreed that Jim and Shannon Young would do all the work necessary
23 to prepare the Thurston County property for Judith's, her otters', and her other animals' use, prior
24 to Judith Young moving out to the Thurston County property.
25
26
27
28

1 46. Judith Young told Jim and Shannon Young that even after Judith Young had moved
2 onto the Thurston County property, that they should continue to live nearby, and that they should
3 continue to assist her in improving and maintaining the property, and operating her otter facility.
4

5 47. Judith Young decided to purchase the Thurston County property.

6 48. Pursuant to Judith Young's instructions, in June 1998 Jim Young submitted written
7 offers to purchase the Thurston County property.

8 49. The owner of the Thurston County property received several offers to purchase the
9 property at prices comparable to the prices offered by Judith Young. However, the owner elected
10 to accept Judith Young's offers to purchase the property because Judith Young's offers were not
11 contingent upon financing.
12

13 50. In June and July 1998, after Jim Young had submitted offers to purchase the
14 Thurston County property on behalf of Judith Young, but before for the sale of the Thurston
15 County property to Judith Young had closed, Jim Young traveled, at Judith Young's request, to
16 Judith Young's property in Georgia to perform further work for Judith Young upon her property
17 there.
18

19 51. Jim Young had an acquaintance, Murphy Wagar, travel with him to Georgia to
20 assist him in performing the work that Judith had requested him to do upon her property there.

21 52. During the course of this visit, Jim Young discussed with Judith Young the issue
22 of how he and Shannon Young would be paid for the work he and Shannon Young had been and
23 would continue to be doing for Judith Young, both to fix up the Thurston County property and for
24 the work that Judith Young had requested him to do to improve her property in Georgia.
25

26 53. As a result of his conversations with Judith Young, Jim Young reasonably and in
27 good faith formed the belief that Judith Young had agreed to pay him for the work that Judith
28

1 Young had asked Jim and Shannon Young to do both on the Thurston County property and her
2 property in Georgia by buying Jim and Shannon Young a property of their own near the Thurston
3 County property.

4 54. Judith Young purchased the Thurston County property without ever having herself
5 seen the property.

6 55. Because Judith Young did not want to leave her otters in Georgia, Judith Young
7 executed a power of attorney authorizing Shannon Young to sign the necessary documentation to
8 close the purchase and sale of the Thurston County property on her behalf.

9 56. The purchase of the Thurston County property closed in late July/early August,
10 1998.

11 57. Judith Young paid a total purchase price for the Thurston County property of
12 \$1,050,000.00.

13 58. The \$1,050,000.00 purchase price of the property reflected the fair market value
14 of the property at the time of its acquisition by Judith Young.

15 59. The legal description of the Thurston County property is:

16 Parcel A:

17 The west half of the Northeast quarter, and that part of the east quarter of the
18 Northwest quarter of Section 14, Township 16 North, Range 2 West, W.M., lying
19 Northerly of Creek; excepting therefrom county road known as 143rd Avenue
20 (formerly McDuff Road) along the North boundary.

21 Parcel B:

22 Parcel 1 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
23 Volume 3 of Large Lot Subdivision, pages 451 through 453 inclusive, under
24 Recording No. 8906230062, Records of Thurston County Auditor.

1 Parcel C:

2 Parcel 2 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in
3 Volume 3 of Large Lot Subdivisions, pages 451 through 453 inclusive, under
4 Recording No. 8906230062, Records of Thurston County Auditor.

5 60. The property is approximately 186 acres in size.

6 61. At the time of the closing of the sale of the Thurston County property, Judith
7 Young and Jim Young's names were put onto the title to the property.

8 62. Jim Young's name was put on the title with the knowledge and consent of Judith
9 Young.

10 63. Jim Young's name was put on the title in the good faith belief that this would
11 facilitate the acquisition of the permits and approvals be necessary to construct the otter pens and
12 related improvements upon the property, and to obtain the permits necessary to move Judith's
13 otters to Washington state.

14 64. At the time of the purchase of the Thurston County property, Judith Young had no
15 plans to use it, rent it, or have anyone live upon it before she moved herself, her otters, and her
16 other animals onto it.

17
18 **JIM YOUNG'S WORK ON GEORGIA PROPERTY**

19
20 65. Between June/July 1998 and March 2002, Judith Young periodically requested that
21 Jim Young travel to her property in Georgia in order to have him perform further work on her
22 property there.

23 66. Between June/July 1998 and March 2002, Jim Young traveled to Judith Young's
24 Georgia property, at her request, on at least 12 separate occasions in order to perform work for
25 Judith Young on her property in Georgia.

26 67. Each of these visits lasted at least a week. Some lasted substantially longer.

27
28 OWEN'S DAVIES, P.S.
 926 - 24th Way SW • P. O. Box 187
 Olympia, Washing
 Phone: (360) 940-0000
 Facsimile: (360) 940-0130

1 68. During these visits Jim Young built five new otter pens, repaired and layed concrete
2 for six additional pens, installed a concrete pad in front of the otter pens, installed a septic system
3 for the otter conservation center office, helped set up the office and replaced the floor of the office,
4 performed road repair work, installed the foundation of a dog barn, assisted with the installation
5 of a new well, cleared approximately 40 acres of land, and performed miscellaneous general labor
6 including the mowing of fields, repairing of fencing, and the performance of plumbing and
7 electrical work upon Judith Young's house.

9 IMPROVEMENTS TO THURSTON COUNTY PROPERTY

10 69. Shortly before the closing of the purchase, the Thurston County property was
11 vandalized.

12 70. Prior to the episode of vandalism, Judith Young and Jim and Shannon Young had
13 not discussed the possibility of anyone living on the property prior to Judith Young moving
14 herself, her otters and her other animals onto it.

15 71. However, after the vandalism, Judith Young agreed that Jim and Shannon Young
16 and their family should move onto the property, in order to prevent additional acts of vandalism.

17 72. Judith Young also understood that Jim and Shannon Young's move onto the
18 property would facilitate Jim and Shannon Young's efforts to clean up, improve, and get the
19 property ready for Judith Young's planned move with her otters and other animals onto the
20 property ready for Judith Young's planned move with her otters and other animals onto the
21 property.
22

23 73. Judith Young never asked Jim and Shannon Young to pay rent, either at the time
24 they first moved onto the property, or at any time thereafter.

25 74. Jim and Shannon Young began cleaning up the Thurston County property,
26 improving it, and getting it ready for Judith Young's move onto the property.
27

1 75. As part of this effort, Jim and Shannon Young, acting in the good faith, reasonable
2 belief that this was within the scope of the work which Judith Young had asked them to do,
3 performed all of the work to improve the property that is described in defendants' Exhibit 87.
4

5 76. The Court specifically find that defendants' exhibit 87 accurately describes the
6 work performed by Jim and Shannon Young on the property between the time when Judith Young
7 originally purchased the Thurston County property and the time of trial.

8 77. The description and enumeration of the work contained in Defendants' Exhibit 87
9 is incorporated by reference herein.

10 78. All of the work which Jim and Shannon Young performed on the Thurston County
11 property was of good and workmanlike quality or better, and was of at least the quality or better
12 than what Judith Young would have be obtained had Judith Young hired a contractor to perform
13 similar work.
14

15 79. Jim and Shannon Young either performed all the work on the Thurston County
16 property themselves, or, to the extent they paid for or bartered with others to provide materials,
17 services, or labor, supervised the work.
18

19 80. Jim and Shannon Young either owned or obtained the heavy equipment, machinery,
20 and tools that were used to improve the Thurston County property.

21 81. Jim and Shannon Young's efforts initially focused on improving the Thurston
22 County property, cleaning up the grounds, clearing the area where the otter pens were to be
23 installed, and improving the outbuildings.

24 82. Between 1998, when the sale of the property closed and the end of 2000, Jim and
25 Shannon Young paid all of the expenses associated with the improvement and upkeep of the
26 Thurston County property.
27
28

1 83. By approximately the end of calendar year 2000, Jim and Shannon Young had done
2 substantially all the work to the outbuildings and grounds described in Defendants' Exhibit 87.
3 The only work described in Defendant's Exhibit 87 which Jim and Shannon Young had not
4 substantially finished was the remodeling and upgrading of the Ranch House.
5

6 84. Shortly after Jim and Shannon Young occupied the Ranch House, they made a
7 limited number of repairs to it. They replaced the roof. They addressed the mold that had grown
8 up where the drywall and floors had become wet. They removed the rugs, leaving plywood floors
9 exposed. They repaired the old, existing toilets and appliances.

10 85. After Jim and Shannon Young had made these limited repairs to the Ranch House,
11 Jim and Shannon Young did not make further substantial repairs to the Ranch House until
12 November 2001, as described below.
13

14 86. The Thurston County property had no fair market rental value in light of the
15 condition it was in at the time it was first occupied by James and Shannon Young.
16

17 CONTACT BETWEEN PARTIES

18 87. After the purchase of the Thurston County property had closed, Judith Young and
19 Jim and Shannon Young kept in constant contact.

20 88. Originally, this contact occurred primarily by telephone.

21 89. Later, in approximately mid-2000, after Jim and Shannon acquired a computer with
22 an Internet connection, this contact also occurred via e-mail. Even then, the parties continued to
23 constantly call one another.
24

25 90. Jim Young and Judith Young would also discuss the work Jim and Shannon Young
26 were doing during Jim Young's frequent trips to Georgia to work on her property.
27
28

1 91. Judith Young was at all times informed and aware of the work that Jim and
2 Shannon Young were performing on the Thurston County property.

3 92. At no time prior to the filing of this complaint did Judith ever advise Jim and
4 Shannon Young that she objected to the work that they were performing on her property, display
5 dissatisfaction with the work, instruct them to stop performing the work, or the like.
6

7 MAINTENANCE

8 93. From the time when Jim and Shannon Young first moved onto the property until
9 the time of trial, Jim and Shannon Young have consistently and actively worked to maintain the
10 house, the outbuildings, and the property in good condition.

11 94. Jim and Shannon Young performed a substantial amount of work maintaining the
12 property.
13

14 95. The work Jim and Shannon Young performed in order to maintain the property is
15 not incorporated into the list of improvements for which Jim and Shannon Young are seeking to
16 recover under a theory of unjust enrichment, as described in Defendants' Trial Exhibit 87.

17 96. To the extent that the Thurston County property may have had a rental value, the
18 work that Jim and Shannon Young put in in order to maintain the property equaled or exceeded
19 the fair market rental value of the property.
20

21 REIMBURSEMENTS

22 97. Between the closing of the sale and the end of 2000, Jim and Shannon Young
23 periodically requested that Judith Young reimburse them for the property taxes and the insurance
24 that they had paid for the Thurston County property, and Judith Young did reimburse them for the
25 property taxes and insurance.
26

1 98. In April 2000, Jim Young seriously injured himself with a chain saw. This
2 interfered with his ability to earn income in that year.

3 99. In December 2000 and January 2001, Judith Young asked Jim Young to travel to
4 Los Angeles, first to check on the health of her father, and then to attend his funeral together with
5 her.
6

7 100. Judith Young then asked Jim Young to travel to Georgia to perform further work
8 on her property there for her.

9 101. Because of the impact on their finances caused by Jim Young's injury in April
10 2000, and because Judith Young had asked Jim Young to travel away from Thurston County, on
11 her behalf, for an unusually long period of time, Shannon Young for the first time asked Judith
12 Young for reimbursement for some of the out-of-pocket expenses which Jim and Shannon Young
13 had incurred in improving the Thurston County property.
14

15 102. Judith Young agreed to reimburse Jim and Shannon Young for some of the out-of-
16 pocket expenses which Jim and Shannon Young had incurred.

17 103. On January 18, 2001, Judith Young wired Jim and Shannon Young the sum of
18 \$52,984.41.
19

20 104. Of this amount \$35,250.00 was reimbursement for out-of-pocket expenses that Jim
21 and Shannon Young had incurred in performing work upon and improving the Thurston County
22 property.

23 105. The balance of the funds wired by Judith Young to Jim and Shannon Young in
24 January 2001 was for reimbursement for property taxes, insurance, and for the cost of a survey
25 Judith Young had directed Jim Young to have performed on her property.
26
27
28

1 106. In February 2001, after Judith Young made this payment, Jim Young traveled to
2 Georgia to Judith Young's property and performed further work for her there.

3 107. In March 2001, Judith Young reimbursed Jim and Shannon Young \$6,009.90 for
4 work that had been performed to a well located upon the Thurston County property.
5

6 CATTLE RANCH AGREEMENT

7 108. Sometime in 2000, Judith Young made the decision that she was not going to move
8 out to the Thurston County property after all.

9 109. However, Judith Young did not immediately communicate her decision to Jim and
10 Shannon Young. Judith Young continued to permit Jim and Shannon Young to continue to work
11 to improve the Thurston County property, and never suggested or directed Jim and Shannon
12 Young to stop performing work on the repairing and improving the property.
13

14 110. By April 2001, Jim and Shannon Young had begun to suspect that Judith Young
15 had decided not to move out to the Thurston County property after all.

16 111. Jim and Shannon Young raised with Judith Young the possibility of developing the
17 Thurston County property into a working cattle ranch.
18

19 112. After discussing this proposal for a period of approximately two months, both
20 Judith Young and Jim and Shannon Young each in good faith formed the belief that they had
21 reached an agreement.

22 113. Jim and Shannon Young reasonably and in good faith believed and understood that
23 their agreement with Judith Young to develop the property into a working cattle ranch included
24 the following:
25

- 26 • Judith Young was to contribute \$150,000.00 in cash, and a one half interest in the
27 property;
28

- 1 • Jim and Shannon Young were to forego any claim for payment for the work that
- 2 they had performed for Judith on her property in Georgia or on her property in
- 3 Thurston County;
- 4 • Jim and Shannon were to contribute at least \$150,000.00 worth of cattle and
- 5 equipment;
- 6 • Jim and Shannon Young, as part owners of the Thurston County property, would
- 7 assume full responsibility for paying the real property taxes and insurance on the
- 8 property;
- 9 • Jim and Shannon were to contribute all of their time and labor, over a 5 to 7 year
- 10 period, necessary to develop the property into a working cattle ranch;
- 11 • At the end of that period the property, cattle, and equipment would be sold and the
- 12 proceeds of the sales split equally between Jim and Shannon, and Judith Young.

13 114. Judith Young's understanding of the terms of their agreement substantially differed

14 from Jim and Shannon Young's understanding. In particular, Judith Young believed that she had

15 not agreed to contribute one-half interest in the property.

16 115. The "agreement" was never reduced to a writing.

17 116. On or about June 11, 2001, acting in the belief that she had reached full agreement

18 with Jim and Shannon Young, Judith Young had \$150,000.00 wired from her account to Jim and

19 Shannon Young.

20 117. Acting in the good faith belief that they had reached an agreement with Judith

21 Young, Jim and Shannon Young accepted the \$150,000.00 payment from Judith Young.

22 118. Acting in the good faith belief that they had reached an agreement with Judith

23 Young, Jim and Shannon Young began developing the property as a cattle ranch.

24 119. Acting in the good faith belief that they had reached an agreement with Judith

25 Young, beginning in June of 2001, and continuing up until the time the complaint in this action

26 was filed, Jim and Shannon Young paid the property taxes on the Thurston County property.

119(a) At all times pertaining to the matters referenced in these Findings, Judith Young acted in good faith as well.

9
LS
me

1 120. The total amount of property taxes which Jim and Shannon Young paid for the
2 Thurston County property during this time period was \$10,677.00.

3 121. Beginning in June of 2001, and continuing up to the time of trial, Jim and Shannon
4 Young paid to have the Thurston County property insured.

5 FLOOD AND RANCH HOUSE REMODEL

6 122. In October 2001, a pipe burst in the interior of the Ranch House.

7 123. Jim and Shannon made a claim upon their insurance on account of the resulting
8 flood.

9 124. Their insurer directed ServPro, a contractor specializing in flood restoration and
10 repair, to prepare an estimate for the work necessary to dry out and repair some of the flood
11 damage.

12 125. ServPro prepared an estimate for its work totaling \$19,914.92.

13 126. The insurer subsequently issued a check made payable jointly to Jim and Shannon
14 Young and ServPro.

15 127. Shannon Young cashed the insurer's check, which she deposited in Jim and
16 Shannon Young's bank account.

17 128. Shannon Young then immediately wrote a check to ServPro for the work that it had
18 performed.

19 129. The work performed by ServPro in response to the flood, for which the insurer paid
20 Jim and Shannon Young, and for which Jim and Shannon Young paid ServPro, constituted work
21 that was not included in work described by Michael Summers in Defendants' Exhibit 87.

22 130. Prompted by the October 2001 flooding incident, Jim and Shannon Young began
23 to substantially remodel and improve the interior of the Ranch House.

1 131. The work Jim and Shannon Young performed included all the work described as
2 line items 2-17 of Defendants' Exhibit 87.

3 132. Jim and Shannon Young had substantially completed all this work by March 2002.

4 SECOND REIMBURSEMENT

5
6 133. In February, 2002 Judith Young again asked Jim Young to travel to Georgia to
7 perform work for her on her property there.

8 134. On this particular occasion, Judith Young wanted Jim Young to promptly install
9 a large, permanent, in-ground otter pen that would require Jim Young to remain in Georgia for an
10 extended period of time.

11 135. In light of the fact that Judith Young had against asked Jim Young to spend an
12 extended period of time away from Thurston County, Shannon Young again asked Judith Young
13 to reimburse Jim and Shannon Young for some of the out-of-pocket expenses that they had
14 incurred remodeling the ranch house.

15 136. In order to induce Jim Young to travel to Georgia to meet her schedule, Judith
16 agreed to reimburse Jim and Shannon Young for these expenses.

17 137. Shannon Young created a list of out-of-pocket expenses that Jim and Shannon
18 Young had paid in connection with the remodel of the Ranch House.

19 138. Shannon Young inadvertently included the ServPro invoice in the list of out-of-
20 pocket expenses which she created and submitted for reimbursement.

21 139. In February 2002, in response to Shannon Young's list, Judith Young had
22 \$87,597.00 wired to Jim and Shannon Young.

23 140. In March of 2002, Jim Young traveled to Georgia and installed the large, in-ground
24 otter pen for Judith Young on her property in Georgia.

JUDITH YOUNG LETTER AND RESPONSE

141. In August, 2002, Judith Young hired an attorney in Seattle in order to prepare the documentation necessary to take Jim Young's name off of the title to the Thurston County property.

142. This attorney sent a letter enclosing the documentation to Jim Young in September, 2002.

143. In response, Jim and Shannon Young had their attorney send Judith Young's attorney a letter describing the cattle ranch agreement as they understood it.

144. Shortly thereafter, Judith Young stopped communicating with Jim and Shannon Young.

SALE OF HORSE

145. In the fall of 2002, after Judith Young had stopped communicating with Jim and Shannon Young, Jim and Shannon Young sold Judith Young's horse, Tuffy.

146. The sale price was \$2,000.00.

THE LAWSUIT

147. In May, 2003, Judith Young filed her complaint in this action.

148. In that complaint, Judith Young asked the Court to quiet title to the property in her name, sought to eject Jim and Shannon Young from the Thurston County property, asked the Court to find Jim and Shannon liable for converting her property, and asked for an award of damages.

149. In June 2003, Jim and Shannon Young filed an answer and counterclaim.

150. In their counterclaim, Jim and Shannon Young asserted a claim under the theory of unjust enrichment for the improvements that they had made to Judith Young's property.

1 151. In September, 2004, the Court heard the parties' cross-motions for summary
2 judgment. The Court granted the Defendants' Motion to Dismiss Judith Young's claim for
3 conversion and damages. Otherwise the Court denied the cross-motions.

4 152. Although it had not been addressed by the pleadings in this matter, at the time of
5 trial both parties sought to introduce evidence pertaining to Judith Young's November 1996 loan
6 of \$150,000.00 to Jim and Shannon Young, and of the payments Jim and Shannon had made with
7 respect to that indebtedness.
8

9 153. The issue of Jim and Shannon Young's indebtedness to Judith Young pursuant to
10 that 1996 loan was tried to the Court with the consent of both parties.
11

12 TRIAL WITNESSES

13 154. The trial of this matter occurred in March of 2005.

14 155. At the trial, Jim and Shannon Young presented the cost estimate and testimony of
15 Michael Summers, a professional cost engineer.

16 156. Mr. Summers described and provided an estimate of the cost that Judith Young
17 would have incurred to have the work performed by Jim and Shannon Young performed by a third
18 party.
19

20 157. The Court specifically finds Michael Summers' testimony, opinions, and cost
21 estimate (Defendants' Exhibit 87) to be accurate and credible.

22 158. The defendants also presented the testimony of Jan Henry.

23 159. Ms. Henry offered her opinion as to the fair market value of the property at the
24 time of its original acquisition by Judith Young.
25

26 160. In her opinion, the Thurston County property's \$1,050,000 sale price accurately
27 reflected its fair market value at the time.
28

1 161. In addition, Jan Henry opined that the Thurston County property is currently worth
2 between \$2.2 and \$2.5 million.

3 162. Jan Henry further opined that approximately \$300-\$400,000 of the increase in the
4 value of the property would have occurred even if Jim and Shannon Young had never performed
5 any work on the property.
6

7 163. The Court specifically finds Jan Henry's testimony and opinions to be accurate and
8 credible.

9 164. The plaintiff presented the testimony of Gene Weaver.

10 165. Mr. Weaver, who is a licenced real estate agent, testified that in his opinion the
11 current fair market value of the property is approximately \$1,150,000.00.
12

13 166. However, the Court finds that the comparable sales upon which Gene Weaver-based
14 his opinion as to the value of the property were not truly comparable, and his testimony was
15 otherwise unreliable.

16 167. The Court specifically finds that Mr. Weaver's testimony and opinions are not
17 credible, and rejects them.
18

19 **FACTUAL FINDINGS RE: UNJUST ENRICHMENT**

20 168. Judith Young asked Jim and Shannon Young to perform work upon the Thurston
21 County property.

22 169. Judith Young was at all times aware of the work that Jim and Shannon Young were
23 performing at the Thurston County property.
24

25 170. Between July 1998 and March 2005, Jim and Shannon Young performed work
26 improving the Thurston County property that substantially enhanced its value.
27
28

1 171. It would be unjust for Judith Young to retain the value by which the work
2 performed by Jim and Shannon Young has enhanced the Thurston County property without paying
3 Jim and Shannon Young therefore.

4 172. Beginning in 1998, Judith Young repeatedly asked Jim Young to travel to Georgia
5 to perform work upon her property there, and Jim Young did so.

6 173. Judith Young was at all times aware of the work that Jim Young was performing
7 at her Georgia property.

8 174. Between July 1998 and March 2005, Jim Young performed work improving Judith
9 Young's Georgia property that substantially enhanced its value.

10 175. It would be unjust for Judith Young to retain the value by which the work
11 performed by Jim Young have enhanced the Georgia property without paying Jim Young
12 therefore.

13 176. Any finding of fact more properly characterized as a conclusion of law is hereby
14 adopted as such.

15 CONCLUSIONS OF LAW

16 Based on the foregoing findings of fact, the Court hereby enters the following conclusions
17 of law:

18 QUIET TITLE

19 1. The Court should enter an order quieting title to the Thurston County property in
20 the name of Judith Young.

1 **UNJUST ENRICHMENT--RIGHT TO RECOVER**

2 2. Jim and Shannon Young performed work for Judith Young upon her properties in
3 Thurston County and in Georgia to Judith Young's knowledge, which have substantially enhanced
4 the value of those properties.

5
6 3. Judith Young, by asking Jim and Shannon Young to perform work improving her
7 properties, impliedly promised to pay therefore.

8 4. It would be unjust for Judith Young to retain the benefit of Jim and Shannon
9 Young's work without having to pay Jim and Shannon Young therefore.

10 **UNJUST ENRICHMENT--MEASURE OF**
11 **DAMAGES--THURSTON COUNTY PROPERTY**

12 5. In an unjust enrichment case, the appropriate measure of damages is generally the
13 greater of: (1) the cost the owner would incur for the property owner to obtain the same services
14 from a third party; and (2) the amount by which the services provided have increased the value of
15 the property.

16
17 6. However, under the particular circumstances of this case, the Court declines to
18 adopt that measure of damages.

19 7. Instead, the Court concludes the gross value of the work related to the Thurston
20 County property for which Jim and Shannon Young should be entitled to recovery under the
21 theory of unjust enrichment is \$501,866.00.

22
23 8. In concluding that Jim and Shannon Young should recover based on a gross value
24 of \$501,866.00, the Court considered the following factors:

25 A. Michael Summers, the cost engineer, whose testimony the Court has
26 generally accepted as credible, testified that it would have cost Judith Young approximately
27
28

1 \$760,382.00 in calendar year 2000 dollars to hire a general contractor to perform the same work
2 Jim and Shannon Young in fact performed to improve her property, as set forth in his cost estimate
3 (Defendants' Trial Exhibit 87).

4 B. Under the circumstances of this case, the Court concludes that Jim and
5 Shannon Young should not be entitled to recover the general contractor's costs identified on page
6 9 of Mr. Summers' estimate (including mobilization/demobilization costs; the cost of providing
7 supervision, tools and general equipment; the cost for debris disposal; a markup for overhead and
8 profit; and construction contingency; the cost of bonds, insurance and business taxes; and the cost
9 of Washington State sales tax).

10 C. Therefore, the Court limits Jim and Shannon Young's recovery to the
11 amount of \$501,866.00.

12
13
14 **UNJUST ENRICHMENT--MEASURE OF**
15 **DAMAGES--GEORGIA PROPERTY**

16 9. The Court concludes the value of the work that Jim Young performed on the
17 Georgia property, for which he is entitled to recover, is \$40,000.00.

18 10. In reaching this conclusion, the Court considered the following factors:

19 A. The Court made no award for the work Jim Young did in clearing land on
20 Judith Young's Georgia property. Clearing land was not really a central goal of what Judith
21 Young was asking Jim Young to do in regards to helping her on the Georgia property.

22 B. The Court concludes that Mr. Young is entitled to recover \$30,000.00 for
23 his work building five new otter pens, plus an additional \$10,000.00 for other work that was done
24 on the Georgia property, including but not limited to the foundation work around setting up an
25 office and various road repairs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECOVERY OF TAXES PAID

11. The Court concludes Jim and Shannon Young are in addition entitled to recover the \$10,677.00 in real property taxes they paid on the Thurston County property, for which they have not been reimbursed.

OFFSET

12. The Court further concludes that it should offset from the gross amount which it concludes Jim and Shannon Young are entitled to recover with respect to the Thurston County and Georgia properties payments relating to this work previously made by Judith Young to Jim and Shannon Young.

13. These payments include the following:

Date	Amount
January 2001	\$35,250.00
March 2001	\$6,009.00
June 2001	\$150,000.00
February 2002	\$87,597.00
TOTAL	\$278,856.00

14. In addition, the Court concludes that it should offset the \$2,000.00 Jim and Shannon Young received from the sale of Judith Young's horse "Tuffy."

15. In addition, the Court concludes that it should offset the \$150,000.00 principle balance due and owing on Judith Young's November 1996 loan to Jim and Shannon Young.

16. The Court concludes that the offset with respect to the November 1996 loan should be treated as if it occurred in March of 2002, such that Judith Young is not entitled to collect further interest that has accrued upon that loan since that date.

1 17. In reaching this conclusion, the Court considered the following factors:

2 A. The November 1996 loan and Jim Young's performance of the work for
3 which they are entitled to an offset are closely related. Jim and Shannon Young were encouraged
4 to perform work for Judith Young, both on her Georgia property and upon the Thurston County
5 property, by the fact that Judith Young had extended this loan.
6

7 B. Jim and Shannon Young had completed substantially all of the work for
8 which they are seeking to recover by way of unjust enrichment by March of 2002.

9 C. Michael Summers estimate of what it would have cost Judith to hire
10 subcontractors to perform the work which Jim and Shannon Young in fact performed on the
11 Thurston County property (Defendants' Trial Exhibit 87), which the Court has accepted as
12 factually accurate, is expressed in calendar year 2000 dollars. Mr. Summers testified that his cost
13 estimate would have been 15%-20% higher had it been expressed in calendar year 2005 dollars.
14

15 D. In light of the foregoing, the Court, in the exercise of its discretion,
16 concludes that the offset of the \$150,000.00 on account of Jim and Shannon Young's
17 improvements to the property should be treated as having occurred in March 2002, thereby
18 extinguishing any obligation that Jim and Shannon Young may have to pay interest payments
19 accruing since that date.
20

21 18. The Court concludes it should award Jim and Shannon Young \$13,600.50 in fees
22 incurred in responding to the late-disclosed opinions of Gene Weaver for the reasons set forth in
23 the Court's Order Granting Motion for an Award of Attorney's Fees Related to Late Disclosed
24 Opinions of Gene Weaver.
25
26
27
28

1 19. Therefore, the Court concludes that after accounting for these offsets, the total
2 amount which the Court awards to Jim and Shannon Young to account for the value by which the
3 work performed by Jim and Shannon has enhanced the value of Judith's property, is as follows:
4

Award with Respect to Thurston County Property	\$501,866.00
Award with Respect to Georgia Property	+\$40,000.00
Award for Real Estate Taxes Paid	+\$10,677.00
Offset for Reimbursement Payments Already Made by Judith Young	-\$278,856.00
Offset for Sale of Horse	-\$2,000.00
Offset for November 1996 Loan	-\$150,000.00
Fees Relating to the Late Disclosed Opinions of Gene Weaver	+\$13,600.50 ^{ME \$5,000.00}
Total Judgment to James and Shannon Young	\$135,287.50

12 **RENTAL VALUE CLAIM** ME \$126,687.00

13
14 20. The plaintiff, Judith Young has asked the Court to award her an offset based on her
15 claim that there is a rental value associated with the Thurston County property. The Court
16 concludes that it should not award Judith Young any such offset.

17 21. In reaching this conclusion, the Court considered the following factors:

18 A. Judith Young never asked Jim and Shannon Young to pay rent and never
19 intended that the Thurston County property generate a rental income;

20 B. There was no evidence establishing the fair market rental value of the
21 Thurston County property in light of its condition at the time Jim and Shannon Young first
22 occupied it;

23 C. It would be unfair to Jim and Shannon Young for Judith Young to recover
24 and enhanced rental value in light of the improvements made to the Ranch House by Jim and
25 Shannon Young. This would effectively permit Judith Young to charge Jim and Shannon Young
26

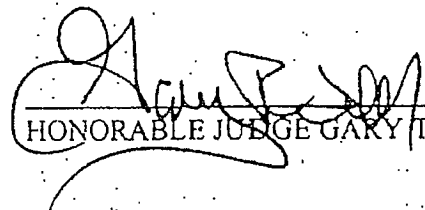
1 rent based on the improvements Jim and Shannon Young themselves made to the Ranch House,
2 and for which they have not yet been entirely reimbursed.

3 D. Although Judith Young attempted to offer expert testimony as to the fair
4 market value of this property in light of its current condition, the testimony established that there
5 is currently no market in Thurston County for the rental of properties of this quality.
6

7 E. The value contributed by Jim and Shannon Young's ongoing maintenance
8 of the property exceeded the rental value associated with the property.

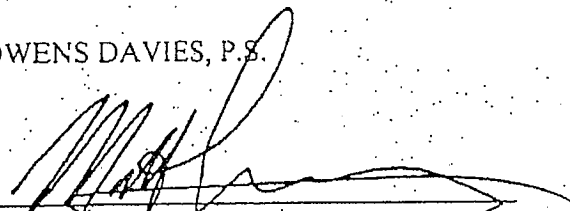
9 22. Any conclusion of law more properly characterized as a finding of fact is hereby
10 adopted as such.

11 DATED this 15 day of April, 2005.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HONORABLE JUDGE GARY TABOR

Approved as to form only;
right to appeal reserved:

OWENS DAVIES, P.S.


Matthew B. Edwards, WSBA No. 18332
Attorneys for Jim and Shannon Young

Approved as to form only;
notice of presentation waived:

Alan Swanson, WSBA No. 1181
Attorneys for Judith Young